



## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9922]

RIN 1545–BP21; 1545–BP22

Guidance Related to the Allocation and Apportionment of Deductions and Foreign Taxes, Foreign Tax Redeterminations, Foreign Tax Credit Disallowance Under Section 965(g), Consolidated Groups, Hybrid Arrangements and Certain Payments Under Section 951A; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (Treasury Decision 9922) that were published in the **Federal Register** on Thursday, November 12, 2020. Treasury Decision 9922 provided guidance relating to the allocation and apportionment of deductions and creditable foreign taxes, the definition of financial services income, foreign tax redeterminations, availability of foreign tax credits under the transition tax, the application of the foreign tax credit limitation to consolidated groups, adjustments to hybrid deduction accounts to take into account certain inclusions in income by a United States shareholder, conduit financing arrangements involving hybrid instruments, and the treatment of certain payments under the global intangible low-taxed income provisions.

DATES: Effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and applicable as of November 12, 2020.

FOR FURTHER INFORMATION CONTACT: concerning §§ 1.861-8 and 1.861-17, Jeffrey P. Cowan, (202) 317-4924; concerning §§ 1.861-20, 1.904-4, and 1.904-6, Suzanne M. Walsh, (202) 317-4908; concerning § 1.881-3, Richard F. Owens, (202)

317-6501; concerning § 1.904(g)-3, Jeffrey L. Parry, (202) 317 4916; concerning § 1.905-4T, Corina Braun, (202) 317-5004 (not toll-free numbers).

## **Background**

The final regulations (TD 9922) that are the subject of this correction are issued under sections 861, 881, 904, and 905 of the Internal Revenue Code.

## **Need for Correction**

As published on Thursday, November 12, 2020 (85 FR 71998), the final regulations (TD 9922) contain errors that need to be corrected.

## **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## **Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

## **PART 1--INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.861-8 is amended by revising the last sentence of paragraph (e)(5)(ii) and the first and second sentences of paragraph (e)(8)(ii) to read as follows:

### **§ 1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.**

\* \* \* \* \*

(e) \* \* \*

(5) \* \* \*

(ii) \* \* \* The deductions are apportioned among the statutory and residual groupings on the basis of the relative values (as determined under the asset method in §1.861-9 for purposes of allocating and apportioning the taxpayer's interest expense) of

the assets that were involved in the event or (if the taxpayer no longer owns the assets involved in the event) the assets that are used to produce or sell products or services in the relevant class in each grouping; such values are determined in the year the deductions are allowed.

\* \* \* \* \*

(8) \* \* \*

(ii) \* \* \* A net operating loss taken as a deduction in computing taxable income for a particular taxable year as allowed under section 172 is allocated and apportioned to statutory and residual groupings by reference to the statutory and residual groupings of the components of the net operating loss (as determined under paragraph (e)(8)(i) of this section) that is deducted in the taxable year. Except as provided under the rules for an operative section, if the full net operating loss carryover is not taken as a deduction in a taxable year, the partial net operating loss deduction is treated as ratably comprising the components of a net operating loss. \* \* \*

\* \* \* \* \*

**Par. 3.** Section 1.861-17 is amended in paragraph (d)(4)(iv), by revising the first sentence and adding a sentence at the end of the paragraph to read as follows:

**§ 1.861-17 Allocation and apportionment of research and experimental expenditures.**

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(iv) \* \* \* If the controlled party has entered into a cost sharing arrangement, in accordance with the provisions of §1.482-7, with the taxpayer for the purpose of developing intangible property, then ordinarily the controlled party is not reasonably expected to acquire rights in intangible property that would arise from the taxpayer's

share of the R&E expenditures with respect to the cost shared intangibles as defined in §1.482-7(j)(1)(i); acquire products in which such intangible property is embedded or used in connection with the manufacture or sale of such products; or receive services that incorporate or directly or indirectly benefit from such intangible property. \* \* \*

However, the rule in this paragraph (d)(4)(iv) does not apply, and the controlled party's sales are taken into account, to the extent the taxpayer licenses, or has licensed, to the controlled party intangible property resulting from a cost sharing arrangement with the controlled party.

\* \* \* \* \*

**Par. 4.** Section 1.861-20 is amended by revising the first sentence of paragraph (d)(3)(i)(B)(2) to read as follows:

**§ 1.861-20 Allocation and apportionment of foreign income taxes.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(i) \* \* \*

(B) \* \* \*

(2) \* \* \* The foreign dividend amount is, to the extent of the U.S. dividend amount, assigned to the same statutory and residual grouping (or ratably to the groupings) to which a distribution of the U.S. dividend amount is assigned under Federal income tax law. \* \* \*

\* \* \* \* \*

**§ 1.881-3 [Amended]**

**Par. 5.** For each entry in § 1.881-3 in the “Paragraph Heading” column, remove the language in “Remove” column and add in its place the language in the “Add” column as set forth below:

<b>Paragraph Heading</b>	<b>Remove</b>	<b>Add</b>
Paragraph (e)(5)	<u>Example 4.</u>	<u>Example 5.</u>
Paragraph (e)(6)	<u>Example 5.</u>	<u>Example 6.</u>
Paragraph (e)(7)	<u>Example 6.</u>	<u>Example 7.</u>
Paragraph (e)(8)	<u>Example 7.</u>	<u>Example 8.</u>
Paragraph (e)(9)	<u>Example 8.</u>	<u>Example 9.</u>
Paragraph (e)(10)	<u>Example 9.</u>	<u>Example 10.</u>
Paragraph (e)(11)	<u>Example 10.</u>	<u>Example 11.</u>
Paragraph (e)(12)	<u>Example 11.</u>	<u>Example 12.</u>
Paragraph (e)(13)	<u>Example 12.</u>	<u>Example 13.</u>
Paragraph (e)(14)	<u>Example 13.</u>	<u>Example 14.</u>
Paragraph (e)(15)	<u>Example 14.</u>	<u>Example 15.</u>
Paragraph (e)(16)	<u>Example 15.</u>	<u>Example 16.</u>
Paragraph (e)(17)	<u>Example 16.</u>	<u>Example 17.</u>
Paragraph (e)(18)	<u>Example 17.</u>	<u>Example 18.</u>
Paragraph (e)(19)	<u>Example 18.</u>	<u>Example 19.</u>
Paragraph (e)(20)	<u>Example 19.</u>	<u>Example 20.</u>
Paragraph (e)(21)	<u>Example 20.</u>	<u>Example 21.</u>
Paragraph (e)(22)	<u>Example 21.</u>	<u>Example 22.</u>
Paragraph (e)(23)	<u>Example 22.</u>	<u>Example 23.</u>
Paragraph (e)(24)	<u>Example 23.</u>	<u>Example 24.</u>
Paragraph (e)(25)	<u>Example 24.</u>	<u>Example 25.</u>

Paragraph (e)(26)	<u>Example 25.</u>	<u>Example 26.</u>
Paragraph (e)(27)	<u>Example 26.</u>	<u>Example 27.</u>

#### **§1.904-4 [Amended]**

**Par. 6.** Section 1.904-4 is amended by removing the language “and (3)” from paragraph (q)(1).

**Par. 7.** Section 1.904-6 is amended by revising the first and second sentences of paragraph (f) to read as follows:

#### **§ 1.904–6 Allocation and apportionment of foreign income taxes.**

\* \* \* \* \*

(f) \* \* \* Some or all of the foreign gross income of a United States shareholder of a controlled foreign corporation, or of a U.S. person that owns the United States shareholder (the “U.S. owner”), that is attributable to foreign law inclusion regime income with respect to a foreign law CFC described in § 1.861–20(d)(3)(iii) or foreign law pass-through income from a reverse hybrid described in § 1.861–20(d)(3)(i)(C) is assigned to the section 951A category if, were the controlled foreign corporation the taxpayer that recognizes the foreign gross income, the foreign gross income would be assigned to the controlled foreign corporation’s tested income group (as defined in § 1.960–1(b)(33)) within the general category to which an inclusion under section 951A is attributable. The amount of the United States shareholder’s, or the U.S. owner’s, foreign gross income that is assigned to the section 951A category (or a specified separate category associated with the section 951A category) is based on the inclusion percentage (as defined in § 1.960–2(c)(2)) of the United States shareholder. \* \* \*

\* \* \* \* \*

**Par. 8.** Section 1.904(g)-3 is amended by revising paragraphs (b)(2) and (3) to read as follows:

**§ 1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for the recapture of separate limitation losses, overall foreign losses, and overall domestic losses.**

\* \* \* \* \*

(b) \* \* \*

(2) ***Full net operating loss deduction.*** If the full net operating loss (that remains after carryovers to other taxable years) is deducted in computing the taxable income in a particular year (carryover year), so that there is no remaining net operating loss that can be carried to other taxable years, U.S. source losses and foreign source losses in separate categories that comprise the net operating loss shall be combined with the U.S. source income or loss and the foreign source income or loss in the same separate categories in the carryover year.

(3) ***Partial net operating loss deduction.*** If the full net operating loss (that remains after carryovers to other taxable years) is not deducted in computing the taxable income in a carryover year, so that there is remaining loss that can be carried to other taxable years, the following rules apply:

(i) Any U.S. source loss (not to exceed the amount of the net operating loss carryover deducted in computing the taxable income in the carryover year (the net operating loss deduction)) shall be carried over to the extent of any U.S. source income in the carryover year.

(ii) If the net operating loss deduction exceeds the U.S. source loss carryover determined under paragraph (b)(3)(i) of this section, then separate limitation losses that are part of the net operating loss shall be tentatively carried over to the extent of

separate limitation income in the same separate category in the carryover year. If the sum of the potential separate limitation loss carryovers determined under the preceding sentence exceeds the amount of the net operating loss deduction reduced by any U.S. source loss carried over under paragraph (b)(3)(i) of this section, then the potential separate limitation loss carryovers shall be reduced pro rata so that their sum equals such amount.

(iii) If the net operating loss deduction exceeds the sum of the U.S. and separate limitation loss carryovers determined under paragraphs (b)(3)(i) and (ii) of this section, then a proportionate part of the remaining loss from each separate category shall be carried over to the extent of such excess and combined with the foreign source loss, if any, in the same separate categories in the carryover year.

(iv) If the net operating loss deduction exceeds the sum of all the loss carryovers determined under paragraphs (b)(3)(i), (ii), and (iii) of this section, then any U.S. source loss not carried over under paragraph (b)(3)(i) of this section shall be carried over to the extent of such excess and combined with the U.S. source loss, if any, in the carryover year.

\* \* \* \* \*

#### **§ 1.905–4T [Removed]**

**Par. 9.** Section 1.905–4T is removed.

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(Procedure and Administration).

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